

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

LARRY PHILPOT

Plaintiff,

v.

UMG RECORDINGS, INC.,

Defendant.

Case No. 1:17-cv-05058-AT

DECLARATION OF LEO M. LICHTMAN

I, Leo M. Lichtman, hereby declare pursuant to 28 U.S.C § 1746 that the following statements are true and correct to the best of my personal knowledge and belief:

1. I am an associate at Oppenheim + Zembrak, LLP, counsel for Defendant UMG Recordings, Inc. (“Defendant”). I submit this declaration in support of Defendant’s Motion to Dismiss Plaintiff’s Complaint for failure to state a claim.

2. Attached hereto as **Lichtman Exhibit 1** are true and correct copies of Wikimedia Commons webpages for Plaintiff’s photographs of Randy Travis and Willie Nelson (the “Photographs”). These webpages display information on the Photographs, including their description, whether they are subject to any licensing restrictions, the history of the underlying file on the webpage, and file metadata.

3. According to the file histories, the Travis Photograph was uploaded to Wikimedia Commons on July 8, 2013 at 11:25 pm, and the Nelson Photograph was uploaded to Wikimedia Commons on June 1, 2011 at 2:21 am.

4. According to the licensing information, the Travis Photograph is licensed under the Creative Commons Attribution 3.0 Unported license, and the Nelson Photograph is licensed under the Creative Commons Attribution 2.0 Generic license. Both of these licenses allow users to copy, distribute, and transmit the work for any purpose, as long as they include attribution.

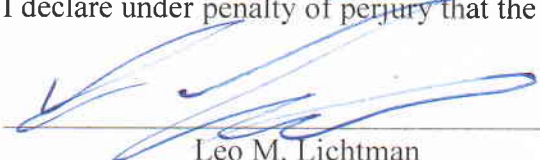
5. Attached hereto as **Lichtman Exhibit 2** are true and correct copies of accompanying Creative Commons licenses. They confirm that the licensor grants the licensee a “worldwide, royalty-free, non-exclusive, perpetual license” to reproduce and distribute the work. The licensee can be any individual or entity exercising rights under the license.

6. To facilitate licensing, Creative Commons provides a “human-readable summary” of the license. Attached hereto as **Lichtman Exhibit 3** are true and correct copies of the human-readable summaries for the accompanying Creative Commons licenses.

7. Attached hereto as **Lichtman Exhibit 4** are true and correct copies of prior complaints that Plaintiff has filed against other parties, alleging infringement of his photographs, including the Nelson Photograph. Plaintiff alleges in each that he published the Photographs to the Wikipedia Website, or published the Photographs under a Creative Commons license. Plaintiff often also alleges that when he published the Photographs on Wikipedia, he agreed to make them “generally available for distribution, public display, and public performance.”

8. Attached hereto as **Lichtman Exhibit 5** are true and correct copies of responses by the Register of Copyrights indicating that it would have refused to issue registrations of unpublished works if it had known that the works were previously published.

I declare under penalty of perjury that the foregoing is true and correct.



Leo M. Lichtman

Executed on October 1, 2017 in Washington, D.C.